

Arkadin Web Site Terms of Use Agreement

NOTICE – THIS IS A LEGALLY BINDING DOCUMENT. READ ALL OF THE TERMS AND CONDITIONS OF THIS “TERMS OF USE” AGREEMENT BEFORE CONTINUING ON THE ARKADIN WEB SITE OR ACCESSING THE SERVICES DEFINED BELOW.

1. INTRODUCTION. This Terms of Use Agreement (“Agreement”) is a legal agreement between Arkadin and you that governs the terms under which you will be permitted to access the Arkadin web site (the “Site”) and/or use the Services provided on the Site.

2. AGREEMENT TO BE BOUND. By accessing the Site or registering for Services, you agree to be bound by the terms of the Agreement, including any incorporated Privacy Policy or other agreement, and any subsequent versions as may be updated from time to time as set forth below (the “Terms”). BY CONTINUING TO ACCESS THE SITE OR REGISTERING WITH ARKADIN, YOU INDICATE YOUR ACCEPTANCE OF THESE TERMS AND AGREE TO BE BOUND THEREBY. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, YOU MAY NOT CONTINUE TO ACCESS THE SITE OR RECEIVE ANY SERVICES FROM ARKADIN. IF YOU DO NOT ACCEPT THESE TERMS, YOU MUST IMMEDIATELY CEASE USE AND/OR ACCESS TO THE SITE OR SERVICES AND DELETE ANY CONTENT OR DATA OBTAINED FROM YOUR HARD DRIVE. The right to use the Site or Services is personal to you and is not transferable to any other person or entity. You are responsible for all use of the account set up by you and for ensuring that all use of the account complies fully with the provisions of this Agreement. Certain services available through the Site may have their own terms and conditions that apply to your use of that particular service (including, but not limited to, the “General Conditions for Services Provided”). The Terms do not in any way alter the terms and conditions that apply to your use of that particular service. To the extent that there is a conflict between the Terms and any terms and conditions that apply to your use of that particular service, those other terms and conditions will govern.

3. TERMS AND DEFINITIONS. For the purpose of this Agreement:

“Arkadin” means Arkadin SA and its subsidiaries.

“Intellectual Property Rights” means any and all rights existing from time to time under patent law, copyright law, trade secret law, trademark law, unfair competition law, and any and all other proprietary rights and any and all applications, renewals, extensions and restorations thereof in force now or hereafter in effect worldwide. “Services” means any services or service components as may be offered by Arkadin from time to time.

4. CHANGED TERMS. Arkadin shall have the right at any time to change or modify the Terms. Such changes, modifications, additions or deletions shall be

binding and effective 30 days after Arkadin's posting the revised Terms on the Site. You agree to periodically and regularly review the Site, including the current version of this Agreement, and to be and remain aware of the Terms of this Agreement. If you do not agree to any revision or change, you may terminate the license described below by providing Arkadin with notice of termination to be addressed to the address mentioned on the footer of the arkadin.com website. Any use of the Site by you after the 30-day period shall be deemed to constitute acceptance by you of such changes, modifications or additions.

5. CONSENT TO USE OF DATA; PRIVACY. You agree that Arkadin and its agents may collect and use technical data gathered as part of the Services provided to you solely to improve its products and Services or to provide customized services to you and will not disclose this information in a form that personally identifies you except as otherwise provided in this Agreement or Arkadin's Privacy Policy. The Privacy Policy is set forth in full at [insert link here]. The Privacy Policy is incorporated by reference and is part of this Agreement as if set forth fully.

6. COPYRIGHT OF SITE CONTENT. All content included on this Site, such as text, graphics, logos, button icons, images, digital downloads, data compilations and software, is the property of Arkadin and protected by copyright laws. All software used on this Site is the property of Arkadin (or the third party who has granted Arkadin the right to use the software) and is protected by copyright laws.

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9. YOUR ACCOUNT. If you open an account with Arkadin for Services, you shall be responsible for maintaining the confidentiality of your login name, password and/or pin code and for restricting access to your computer or account. You are responsible for (a) the use of your information or access to the account by any individual with whom you (i) share your user name, password and/or pin code, or (ii) authorize to use your account, and/or (b) any unauthorized use or access that results in whole or in part from your failure to protect the confidentiality of your user name, password, pin code, computer or account. If you are under 18, then the access of the Site and use of the Services must be with the permission, consultation and involvement of the parent or guardian who likewise agrees to this Agreement. Arkadin reserves the right to refuse service, terminate accounts, remove or edit content, or cancel requests for Services in its sole discretion.

10. CONDITIONS OF SERVICES. You agree that you will not use or access the Site for any commercial purpose other than the fulfillment of your request for Services. You agree to use the Site in a manner consistent with all applicable laws and regulations.

11. TERMINATION. This Agreement remains in effect until terminated by you or Arkadin, with or without prior notice, at any time and for any reason. Sections 6, 7, 8, 12, 13, 14, 15, 16 and 17 shall survive termination of this Agreement.

12. DISCLAIMER OF WARRANTIES. You agree that access to the Site and the use of the Services is solely at your risk. The Site and all Services are provided by Arkadin on an "as is" and "as available" basis. EXCEPT AS MAY BE OTHERWISE NOTED IN THIS AGREEMENT, ARKADIN EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. ARKADIN DOES NOT MAKE ANY WARRANTY THAT THE SERVICES LICENSED HEREIN WILL MEET YOUR REQUIREMENTS OR THAT ACCESS TO THE SITE OR SERVICES WILL BE AVAILABLE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE. ARKADIN MAKES NO WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USING THE SITE OR SERVICES. YOU AGREE THAT ANY MATERIAL AND/OR DATA DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SITE IS DONE AT YOUR OWN RISK AND DISCRETION AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT MAY RESULT FROM THE DOWNLOAD OR ACCESS OF SUCH MATERIAL AND/OR DATA. ARKADIN MAKES NO

WARRANTY REGARDING ANY SERVICES PROVIDED BY THIRD PARTIES THAT ARE OBTAINED THROUGH OR AS A RESULT OF ANY OF THE SERVICES OR ANY TRANSACTION ENTERED INTO, THROUGH OR AS A RESULT OF YOUR USE OF THE SITE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM ARKADIN OR THROUGH THE SITE SHALL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN AND YOU MAY NOT RELY ON ANY SUCH INFORMATION OR ADVICE. TO THE EXTENT THAT CERTAIN JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES, SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY. IT IS AGREED THAT THE EXCLUSIONS SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW.

13. EXCLUSION OF INCIDENTAL, CONSEQUENTIAL AND CERTAIN OTHER DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL ARKADIN BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS OR CONFIDENTIAL OR OTHER INFORMATION, FOR BUSINESS INTERRUPTION, FOR PROSPECTIVE BUSINESS ADVANTAGE, FOR PERSONAL INJURY, FOR LOSS OF PRIVACY, FOR FAILURE TO MEET ANY DUTY INCLUDING OF GOOD FAITH OR OF REASONABLE CARE, FOR NEGLIGENCE, AND FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER) ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF, MISUSE OF OR INABILITY TO USE THE SITE OR SERVICES, THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT OR OTHER SERVICES, INFORMATION, SOFTWARE, AND RELATED CONTENT THROUGH THE SITE OR OTHERWISE ARISING OUT OF THE USE, MISUSE OR UNAVAILABILITY OF THE SERVICES OR SITE, OR OTHERWISE UNDER OR IN CONNECTION WITH ANY PROVISION OF THIS AGREEMENT, EVEN IN THE EVENT OF THE FAULT, TORT (INCLUDING NEGLIGENCE), MISREPRESENTATION, STRICT LIABILITY, BREACH OF CONTRACT OR BREACH OF WARRANTY OF ARKADIN, AND EVEN IF ARKADIN HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

14. LIMITATION OF LIABILITY. UNDER NO CIRCUMSTANCES SHALL ARKADIN BE LIABLE TO YOU ON ACCOUNT OF YOUR USE OR MISUSE OF THE SITE OR CONTENT PROVIDED IN CONNECTION THEREWITH. SUCH LIMITATION OF LIABILITY SHALL APPLY TO PREVENT RECOVERY OF DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY AND PUNITIVE DAMAGES, WHETHER SUCH CLAIM IS BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE (EVEN IF ARKADIN HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES). SUCH LIMITATION OF LIABILITY SHALL APPLY WHETHER THE DAMAGES ARISE FROM USE OR MISUSE OF AND RELIANCE ON THE SITE OR FROM THE INTERRUPTION, SUSPENSION OR TERMINATION OF THE SITE, INCLUDING DAMAGES THAT MIGHT BE INCURRED BY THIRD PARTIES. SUCH LIMITATION SHALL APPLY NOTWITHSTANDING A FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND THE FULLEST EXTENT PERMITTED BY LAW.

15. EXCLUSIVE REMEDY. You agree that Arkadin's sole liability and your exclusive remedy, in law, in equity or otherwise, with respect to the Site or for any breach of this Agreement is solely limited to Arkadin's cure of the Services that did not substantially and materially perform in the manner set forth in the Site or Arkadin's payment to you of the average monthly charges to you for Services during the past 12 months preceding the date of event, act or omission giving rise to the claim of liability, at Arkadin's discretion.

16. APPLICABLE LAW. If you are a Client (as defined in the Privacy Policy) or an invitee of the Client in order to use the Services, this Agreement will be governed by and construed in accordance with the laws of the country in which is located the principal office of the Arkadin entity with whom the Client has contracted (the "Principal Office") and, in the case of the United States, the law of the state in which is located the Principal Office, excluding its conflict of laws rules; and you and Arkadin hereby agree to submit to the sole and exclusive subject matter jurisdiction, personal jurisdiction and venue of the courts having jurisdiction over the Principal Office. If you are not a Client or invitee of a Client, this Agreement will be governed by and construed in accordance with the laws of the jurisdiction in which you reside.

17. MISCELLANEOUS PROVISIONS.

17.1. If for any reason a court of competent jurisdiction finds any provision or portion thereof to be unenforceable, the remainder of the terms of the Agreement shall continue in full force and effect.

17.2. This Agreement and any expressly incorporated document represents the entire agreement between the parties with respect to the subject matter hereof and supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral.

17.3. The failure by Arkadin to enforce any provision of this Agreement or portion thereof does not act as a waiver or estop Arkadin from enforcement of the remaining terms.

17.4. The section headings appearing in this Agreement are inserted for convenience only and in no way define, limit, construe or describe the scope or extent of any section or, in any way, affect such section. 2201891 v3